



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,096	10/29/2001	Carl E. Whitcomb	WHIT/0002	7255

7590 07/25/2005

STREETS & STEELE  
Suite 355  
13831 Northwest Freeway  
Houston, TX 77040

EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

10/075,096

EXAMINER
----------

ART UNIT	PAPER
----------	-------

20040625

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

The IDS submitted on 3/10/04 has been considered by the Examiner and attached herein. In addition, the Examiner's Answer filed on 7/1/04 with conferees initials has been submitted.

Son T. Nguyen  
Primary Examiner  
Art Unit: 3643



UNITED STATES PATENT AND TRADEMARK OFFICE

---

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**MAILED**

**JUL 25 2005**

**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/075,096  
Filing Date: October 29, 2001  
Appellant(s): WHITCOMB, CARL E.

---

Frank J. Campigotto  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/19/04. Note, this is a supplemental to the examiner's answer mailed on 7/1/04. The only difference is the signature of the conferees, which was inadvertently left out in the examiner's answer mailed on 7/1/04.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-65 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

GB 2073576	Berlit et al.	10-1981
6202348	Reiger	3-2001
5311700	Thomas	5-1994
EP300578	Van der Goorbergh	1-1989
5852896	Flasch	12-1998
3094810	Kalpin	12-1960
6223466	Billings	5-2001

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,2,4,13-16,18,19,29,30,41,46,48,49,53,63 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 1/14/04.

Claims 3,5-12,17,20-28,31-40,42-45,47,50-52,54-62,64,65 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 1/14/04.

**(11) *Response to Argument***

**Appellant argued that Berlit does not disclose a root-tip-trapping material or a porous fabric.**

On page 1, line 130 and page 2, lines 1-11, Berlit states that layer 11, which the Examiner is considering being a root-tip-trapping material, can be made out of polypropylene, which is the same material as claimed by Appellant in claim 9 for a porous fabric. Therefore, Berlit's layer 11 is a root-tip-trapping material. In addition, as responded in the final office action mailed on 1/14/2004, polypropylene is a fabric

material, i.e. fabric of fibers, thus, it is inherent that the material allows air to flow therethrough, thus, making the material porous. Appellant argued toward claim 8 which claims spun bonded, needle punched fabric, but claim 8 was never rejected with Berlit alone. Berlit was combined with Reiger for a teaching of spun bonded, needle punched fabric. Claim 1 is very broadly claimed as a root-tip-trapping material, therefore, Berlit alone teaches this limitation.

**Appellant argued that the layers of Berlit's invention are laminated by co-extrusion, therefore, the layers are solid and form relatively smooth and continuous interfaces between layers and relatively smooth and continuous inner and outer surfaces.**

Berlit's laminate by co-extrusion is for bonding the boundary between layers and not actually making the layers smooth and continuous surfaces as alleged by Appellant. Nowhere in the disclosure of Berlit does he indicate such smoothness and continuous surfaces. All Berlit states is that the layers are bonded together by laminate by co-extrusion (page 1, lines 28 & 100), just as the same claimed by Appellant in claim 15. Lamination by co-extrusion as in Berlit is still lamination to bond the layers together, which is similar to claim 15 of Appellant. In addition, on page 1, lines 100-105, pigment 19 is embedded in layer 11, thus, layer 11 cannot be smooth and continuous because of pigment 19 being embedded therein. Furthermore, page 1, line 112, indicates that the barrier of Berlit is to resemble a clay pot, thus, a clay pot is not smooth surface at all; instead, the clay pot has rough surface.

**Appellant argued that Berlit does not disclose ranges as claimed in claims 3,65,5,6,50,7,51,25,26,64,31,32.**

It is true that Berlit or Berlit in combination of other references does not claim these ranges. However, the Examiner believes that it would have been obvious to one of ordinary skill in the art through testing and experimentation to discover these ranges, depending on the plant roots being grown in the container or the like. In addition, throughout Appellant's specification, there is not one critical reason as to why Appellant has to have these values. Instead, throughout the specification, Appellant states that these ranges are preferred only and no reason to follow as to why they are preferred. It appears that these ranges are derived by Appellant through general experimentation on the applicable opening sizes for the type of plants being studied.

**Appellant argued that Berlit has attempted to solve the problem associated with thin-walled containers that allowed too much light to penetrate the thin walls and damage the root systems contained in the plant containers, which is opposite to what Appellant's desired to encourage healthy root growth.**

Page 1, lines 104-105 of Berlit clearly states that Berlit is interested in keeping the roots healthy, which is the same motivation as that of Appellant. Therefore, Berlit does address the same problem sought by Appellant, and that is to promote healthy root growth.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Son T Nguyen  
June 7, 2005

Conferees

Peter M. Poon



Jeffrey Gellner

STREETS & STEELE  
Suite 355  
13831 Northwest Freeway  
Houston, TX 77040